

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

IN THE INTEREST OF:

MAYA KOWALSKI,

Case No: 2016DP601

A Child.

**ORDER CHANGING PLACEMENT STATUS, DISCHARGING CHILD FROM
HOSPITAL INTO INTERIM CARE OF FATHER, SETTING HEARING TO REVIEW
FATHER'S TREATMENT PLAN COMPLIANCE, AND ORDER FOR MEDIATION**

As required by court order, the parties appeared on January 12, 2017, to consider reunification and/or dismissal of the Petition for Dependency. The hearing was set on notice of the death of the mother, Beata Kowalski, on January 7, 2017.

Appearing at the hearing were David Silverstein, attorney for DCF, Debra Salisbury, attorney for father, Mark Silverstein, attorney for Maya, and Jared Monahan, attorney for the Guardian ad Litem Program. Also in attendance was Howard Hunter, counsel for Johns Hopkins All Children's Hospital (JH-ACH).

On the day of the hearing father's counsel filed a sworn motion to dismiss the dependency petition. It was not heard as DCF objected that it had insufficient time to review the motion and to determine if a traverse was appropriate.

As a consequence of the mother's death, the focus of the hearing evolved to the issue of releasing the child to Nemours Children's Hospital in Orlando or to the father. This was not the first time the subject of the proper facility for Maya's discharge was before the court.

On December 22 and 29, 2016, the parties appeared at hearings for the purpose of discussing placement options. Maya has been a patient at JH-ACH since the middle of October, 2016 when she was sheltered and placed in DCF's legal custody. For some time, the hospital, DCF, and the Guardian ad Litem have agreed the child should be transferred to a different facility, one better equipped to address the complex medical issues facing the child.

JH-ACH's medical staff strongly recommends that Maya be discharged to an inpatient facility. The hospital's position is that the best prospects for improvement are with intense physical rehabilitation and psychotherapy that only such a facility can provide. The parents are equally insistent that the child can be appropriately treated at home, together with out-patient physical therapy and mental health counseling. At the December hearings the parents were willing to forgo the controversial Ketamine injections and adopt less aggressive pain remediation regimens while the case was pending.

Dr. Catherine Major, a pediatric hospitalist and member of Maya's treatment team at JH-ACH, testified at the hearing on December 29 that the child requires 4 or 5 hours of daily intensive

physical therapy and cognitive behavioral therapy at a skilled facility, and this can best be provided in the residential setting. The hospital is not able to provide this level of treatment.

The parents say they took Maya to JH-ACH in October because she was in severe pain and non-responsive to their doctor's recommended Ketamine treatment regimen. Before that admission they contend they were providing a high level of care for their daughter following the medical advice of Dr. Ashraf Hanna, a Tampa pain management physician knowledgeable in the field of Complex Regional Pain Syndrome. It was he, they say, who had approved Ketamine in the dosages Maya received at home and for a week in Mexico where a Ketamine induced coma was induced. Dr. Hanna supported the parents' representation when he testified in court at a prior hearing.

The parents and the child's pain doctor say separation of Maya from her family is causing her to be angry and depressed, that she needs water therapy and less rigorous physical therapy than JH-ACH suggests, and that the mode of treatment recommended by the hospital is not only contra indicated but harmful. They are confident Maya is suffering from CRPS and not the other conditions suspected by the hospital.

At the heart of the controversy is the cause of Maya's condition. There is wide divergence in working diagnoses. Dr. Sally Smith, a pediatrician and member of the Pinellas County Child Protection Team whose opinion is respected by the hospital, suspects Factitious Disorder (also known as Munchausen by Proxy Syndrome) implicating the mother. Others at JH-ACH, like Dr. Major, have diagnosed Conversion Disorder (largely a psychosomatic condition), and the latter is represented to be the hospital's current discharge diagnosis.

Both sides say they know what is best for Maya and are insistent the other's position is medically unsound. Based on testimony in court from treating physicians at several hearings, one may conclude the experts' opinions are antipodal on the core issue.

On December 22, the court asked the parties to report back on December 29 with options for placement, assuming Maya were discharged from JH-ACH pending trial. At the latter hearing the court was informed that no in-patient facilities could be located in the State of Florida willing to accept a child as medically complex as Maya. Early in the case preliminary approval had been obtained for her transfer to Nemours Children's Hospital in Orlando, but placement stalled when the parents objected to the admitting diagnosis. It later declined to accept the patient. In December, Brooks Rehabilitation Hospital in Jacksonville was approached. It too declined.¹

At the hearing on December 29, DCF suggested Cincinnati Children's Hospital or Kennedy Krieger Institute in Baltimore, among other in-patient facilities that specialize in treating children like Maya. The hospital's attorney, Howard Hunter, who was instrumental in identifying these facilities, explained that a number of steps were necessary to determine if they would accept Maya, and it could take a couple of weeks for the hospitals to work through the bureaucracies to get a response. He was directed to use his best efforts to expedite the process and to inform the

¹ The litigious history of this case as well as the medical complexities may contribute to the rehabilitation facilities' reluctance to accept Maya's case.

court of the progress at the status hearing set for January 6, 2017. At that later hearing it was disclosed that the out-of-state options were not viable.

The parents object to any out-of-state options, saying this would further remove Maya from her family and friends, as well as provide the wrong treatment modality. They proposed, as Plan A, that Maya be returned home with treatment provided locally in Sarasota County. Plan B was for out-patient options in Gainesville, Naples, or Orlando. These involved Maya and her father residing in Ronald McDonald houses and engaging in rehabilitative services and psychological counseling at facilities in the community. Maya would be transported to therapies by her father and followed by Dr. Hanna in Tampa and Dr. Wassenaar, Maya's favored pediatrician who practices in Osprey. These options were feasible because the mother was available to stay in Sarasota and care for Kyle, Maya's younger brother.

At the time of the January 6 hearing, after review of the options and because the adjudicatory hearing was set for February 20, 2017, the court concluded the most prudent course was to maintain the status quo and keep Maya at JH-ACH pending trial. Then DCF would have the opportunity to prove its case of medical child abuse or the child would go home. However, the mother's death has profoundly altered the "maintain status quo" alternative.

Based on its assessment of Maya's condition, JH-ACH continues to recommend in-patient treatment and asserts only such a facility has the expertise to address the patient's complex needs. As noted, Nemours was ruled out as a discharge option for Maya early in the case. However, at the hearing on January 12, hospital's counsel advised that after recent discussions the facility had reconsidered and now was willing to accept the child.

After review of the parties' discharge recommendations and the divergent testimony taken from medical and mental health experts at prior hearings, the only practical option at this time is to discharge Maya to the care of her father pending trial, with the treatment plan as outlined in this order. The court is reluctant to go against the medical advice of the hospital, but the exigencies of this case and its view of what is in Maya's best interest at this time, compels it to do so.

The court concedes that returning Maya to her home is contrary to the recommendation of JH-ACH's medical staff who have been treating her for three months. However, it is the court's judgment that the hospital's concern - that less intensive treatment will retard or harm Maya's recovery - is overridden by the benefits that may be gained by returning the child to her family, at least for the time between now and the adjudicatory hearing. This is an interim arrangement that recognizes the outpatient approach may have to revert to inpatient, depending on the evidence adduced at the adjudicatory hearing. The court notes the Guardian ad Litem Program concurs with Maya returning home, and it is obviously supported by the patient.

The following factors have contributed to this conclusion:

1. Nemours Children's Hospital is in Orlando, 145 miles from the Kowalski home in Venice. While it would provide the intensive therapies JH-ACH recommends, Maya's exile from her family, which has already lasted over 90 days, will continue, adding to her depression and treatment intransigence. Mr. Kowalski's ability to have personal contact with his daughter would be severely restricted. Such contact is helpful if not essential in

Maya reaching maximum medical improvement. He is now a single parent who lives in Venice and his obligations as caretaker for Kyle would preclude his active participation in her rehabilitation. For these reasons, the out-patient options proposed by the parents in Gainesville, Orlando, and Naples also are excluded. If the father were living at Ronald McDonald houses in any of those locations, there would be no parent to care for Maya's sibling at home.

2. The psychological evaluation of Mr. Kowalski revealed no issues of concern. The psychologist concluded he poses no risk to his children. Moreover, Dr. Sally Smith's conclusion that there was "strong evidence" of Munchausen by Proxy affecting Maya's medical condition, pointed the finger at Beata Kowalski, not her husband. If Munchausen by Proxy was truly a contributing cause, the most likely causative agent no longer poses a threat, and that was DCF's primary concern precipitating the shelter. In addition, it is JH-ACH's position that Beata was an underlying cause of Maya's illness. This opinion is the foundation for the strict rules prohibiting her personal contact with Maya while she was hospitalized. The need for such extreme measures is dissipated with the passing of Mrs. Kowalski.
3. Finally, what is dispositive on the discharge issue is the emotional toll on Maya were she to remain hospitalized, and the impact continued separation would have, given the recent family tragedy. She just lost her mother with whom she had a very close and loving relationship. She has an antagonistic relationship with hospital personnel, is oppositional, angry, and is refusing to comply with staff directions. On the recommendation of the hospital, enforced by court order, contact with her family has been severely restricted. She has been deprived of meaningful educational opportunities, holiday celebrations, free communication with friends and relatives, and frequent access to the comforts offered by her Catholic religion. She now needs to grieve with the support of family and friends. This cannot be provided in a hospital environment nor can it occur at a facility in Orlando. Despite the best efforts of JH-ACH to address her needs, and without attributing blame to the facility or the Kowalski's, the hostility between Maya and the hospital has progressed to the point that further treatment there has become pointless. Improvement in her condition has stalled in neutral. While there may be a risk that the outpatient treatment she will receive as a result of this order will be substandard or misdirected, with the treatment plan required herein the hiatus from in-patient treatment should not be harmful, and may prove beneficial pending trial.

NOW, THEREFORE, on its own motion the court ORDERS:

- A. Maya Kowalski shall be discharged from Johns Hopkins All Children's Hospital into the interim care of Jack Kowalski **as soon as practicable**, but no later than **5:00 p.m., Wednesday, January 18, 2017**. The parties shall cooperate to select the time of discharge. The hospital shall provide a discharge summary to the parties with its diagnosis, a list of Maya's current medications, and recommendations for treatment. This discharge is by court order after finding good cause and that the change is in the child's best interest, at least for the near term. The objections of DCF and the hospital are duly noted, respected, but overruled.

B. The court has previously granted permission for the child to be transported to Rhode Island to be examined by Dr. Pradeep Chopra, an expert identified by the parents as an expert in Complex Regional Pain Syndrome. This visit is authorized under such conditions as Mr. Kowalski deems necessary and appropriate, and shall be at his expense. He is at liberty to choose the persons to accompany the child and to arrange all details for transportation. However, the child shall not be out of the State of Florida for this evaluation for more than **72 hours**. A travel itinerary shall be provided to the parties no less than **24 hours** prior to departing Sarasota County. The father shall inform the parties of the date and time of return. He is responsible for the medical care and protection of Maya while on the visit and prior to trial. Adverse medical events affecting the child at any time, including during the trip, shall be reported promptly to the parties. Except for the visit to Rhode Island, the child shall not leave the State of Florida without the prior consent of the parties or the court. A separate order for this out-of-state evaluation is not required.

C. The father has asked the court for permission for Maya to attend the funeral and related services for her mother. Except for the admonition that she shall not be overtaxed physically or emotionally, he may involve her in such activities as she is able to safely tolerate. He shall inform the parties immediately of any hospitalizations or significant deteriorations in her condition. He shall sign such consents as may be necessary for DCF to confirm Maya's progress in treatment.

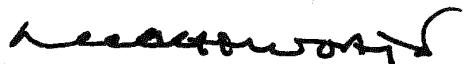
D. The child may reside with her father but she remains subject to the legal custody of DCF and the jurisdiction of the court.

E. The following treatment plan shall be implemented by the father for Maya pending trial or further court order.

1. No Ketamine shall be administered. Absent a court order, psychotropic drugs must be approved by the Guardian ad Litem and DCF prior to being administered. The father shall keep a list of all medications prescribed for Maya.
2. Counseling shall be commenced with Rebecca Johnson, MS, who shall be advised of the hospital's diagnosis of conversion disorder. Ms. Johnson shall be encouraged to consult with Dr. Tashawna K. Duncan, who has recently completed a psychological evaluation of the child.
3. The use of phones, tablets, or computers by Maya shall be as directed by the father.
4. Treatment by Dr. Hanna is authorized subject to the Ketamine restriction.
5. Treatment shall be commenced with Agility Physical Therapy, and may include water or such other therapies as may be medically indicated. Alternative therapies may be engaged by the father if recommended by a treating physician.
6. Dr. John Wassenaar, MD, pediatrician, shall evaluate Maya within 10 days of discharge, report his findings to the parties, and provide such additional services as the father and Maya may require.

7. The father shall contact the school board of Sarasota County to arrange for such educational opportunities as may be available, given her medical limitations.
- F. The court reserves the option to order a change of placement of the child to an in-patient facility or medical foster home on a showing that Maya's condition has worsened or adverse medical events have occurred requiring such a change. DCF shall attempt to locate appropriate facilities or medical foster homes capable of accepting Maya as a patient on short notice.
- G. The father shall facilitate the Guardian ad Litem's access to all of Maya's medical, psychological, and educational records, and permit the GAL to visit the home and have private conversations with the child. DCF's case manager shall also have access to Maya to observe her condition and progress in therapy.
- H. The parties shall appear for a status conference to review the father's compliance with the treatment plan, Maya's transition and progress on **Monday, January 30, 2017**, at 9:30 a.m., Courtroom 6A.
- I. The parties are ordered to mediate this case prior to the adjudicatory hearing at a time convenient to them.

DONE AND ORDERED IN SARASOTA, SARASOTA, FLORIDA THIS 13th DAY OF JANUARY, 2017.


LEE E. HAWORTH
SENIOR CIRCUIT JUDGE

cc: David Silverstein, Esq.
Sarah Runevitch, Esq.
Children's Legal Services, DCF

Debra Salisbury, Esq.
Attorney for Mother

Varinia Van Ness, Esq.
Attorney for Father

Mark Zimmerman, Esq.
Attorney for child

Jared Monahan, Esq.,
Program Attorney, Office of the Guardian ad Litem

Howard Hunter, Esq.
Ethen R. Shapiro, Esq.
Attorney for JH-ACH, a non-party